

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, et al., individually and )  
on behalf of all others similarly situated, ) 8:08CV90  
Plaintiffs, )  
and )  
DAVID CHUOL, et al., individually and on )  
behalf of all others similarly situated, ) 8:08CV99  
Plaintiffs, )  
vs. ) ORDER  
NEBRASKA BEEF, LTD. and )  
NEBRASKA BEEF, INC., )  
Defendants. )

This matter is before the court on the parties' stipulation concerning notice ([Filing No. 146](#))<sup>1</sup>. Upon consideration,

**IT IS ORDERED:**

The parties' stipulation concerning notice ([Filing No. 146](#)) is approved as set forth below.

**IT IS FURTHER ORDERED:**

1. Pursuant to the Court's Report and Recommendation dated October 20, 2008 ([Filing No. 142](#)), which was affirmed by the Court's Order dated November 21, 2008 ([Filing No. 145](#)), notice of this lawsuit pursuant to 29 U.S.C. 5 216(b) will be provided to the following group of individuals:

All current and former non-exempt, hourly production and support employees who have been employed at any time by Nebraska Beef, Ltd. and/or Nebraska Beef, Inc. at the Omaha,

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<sup>1</sup>Stipulation only filed in case no. 8:08CV99, contrary to requirement in June 12, 2008 Order. See [Filing No. 123](#). Accordingly, all filing numbers refer to case 8:08CV99.

Nebraska processing facility during the time period March 4, 2005 to the present, and who use personal protective equipment (the "Class").

2. The defendant has provided the plaintiffs' counsel with a computer-readable data file containing the names, addresses and telephone numbers of all Class members so that notice may be implemented.

3. The parties have agreed and the court approves of the form of Notice of Collective Action Lawsuit and Opt-In Consent Form attached as Exhibits 1 and 2, hereto.

4. The plaintiffs have elected to issue notice using a third-party Claims Administrator, Rust Consulting. Rust Consulting is hereby appointed by the court as the Claims Administrator in this case. The plaintiffs may elect to file a motion requesting the defendant to bear all or part of the cost of issuing notice to the Class.

5. The court orders that the Notice of Collective Action Lawsuit and Opt-In Consent Form shall be sent to all Class members within **five (5) business days** of this Order. Rust Consulting shall send the approved Notice of Collective Action Lawsuit and Opt-In Consent Form in both English and Spanish by U.S. first class mail to all Class members, to inform them of their right to opt-in to this lawsuit.

6. Rust Consulting shall send a draft of the final form of mailing of the English and Spanish versions of the Notice of Collective Action Lawsuit and Opt-In Consent Form to the defendant to review before it is mailed to Class members.

7. All Class members shall be provided with **one hundred and twenty (120) days** from the date of mailing the notice to "opt-in" to this lawsuit (the "Opt-In Period").

8. All Opt-In Consent Forms will be deemed to have been filed with the Court the date that they are stamped as received by the Claims Administrator. The Claims Administrator will send .pdf copies of all returned Opt-In Consent Forms to the plaintiffs' counsel, who will file them electronically on the docket on a weekly basis.

DATED this 2nd day of February, 2009.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge

**EXHIBIT A  
POSTED NOTICE**

**ATTENTION CURRENT AND FORMER HOURLY EMPLOYEES OF NEBRASKA BEEF**  
**NOTICE OF COLLECTIVE ACTION LAWSUIT**

***CHUOL, et al. v. NEBRASKA BEEF and CORTEZ, et al. v. NEBRASKA BEEF***

Case Nos. 8:08CV90 and 8:08CV99

United States District Court, District of Nebraska

**TO:** All current and former non-exempt, hourly production and support employees who have been employed at any time by Nebraska Beef, Ltd. and/or Nebraska Beef, Inc. at the Omaha, Nebraska processing facility during the time period March 4, 2005 to the present, and who use personal protective equipment.

**RE:** FLSA lawsuit seeking alleged unpaid overtime compensation

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which the Court has conditionally determined that you are "similarly situated" to the named Plaintiffs. The lawsuit alleges that hourly production and support workers at Nebraska Beef's Omaha, Nebraska beef processing facility: 1) failed to receive payment for all hours worked, including, but not limited to, time spent putting on protective equipment and clothing and cleaning/preparing tools at the beginning of the day, and removing and cleaning such equipment, clothing, and tools at the end of the day; and 2) failed to receive overtime compensation for hours worked in excess of forty (40) hours per week. Nebraska Beef denies all allegations in the lawsuit. The Court has not made any determination regarding the merits of the lawsuit.

If you wish to join the lawsuit or have any questions about it, please contact:

**Rust Consulting**

Attn: Nebraska Beef Wage & Hour Litigation

**INSERT ADDRESS**

**INSERT ADDRESS**

**INSERT 1-800 NUMBER**

If you decide to join this lawsuit, your continued right to participate in this suit may depend upon a later decision by the District Court that you and the named Plaintiffs are actually "similarly situated" in accordance with federal law.

**Federal law prohibits Nebraska Beef from discharging or in any other manner discriminating against you - including threatening your right to reside in or be citizen of the United States - should you decide to exercise your rights under the Fair Labor Standards Act and join this action.**

**★★ PLEASE NOTE ★★**

There is a two (2) year deadline for filing overtime claims (or three (3) years if the violation was willful) running from the date(s) the overtime hours were actually worked. To maximize your recovery, return your "Opt-in Consent Form" as soon as possible so that your rights may be preserved.

### **RADIO NOTICE**

Attention Current and Former Employees of Nebraska Beef's beef processing facility in Omaha, Nebraska. This is an important court-authorized notice to inform you of your legal right to participate in a representative class action lawsuit against Nebraska Beef. The lawsuit seeks to recover unpaid wages on behalf of hourly production employees, employed in fabrication, slaughter, head room, tripe, and/or sanitation departments.

The lawsuit alleges that hourly production and support workers at Nebraska Beef's Omaha, Nebraska beef processing facility failed to receive payment for time spent putting on and taking off protective equipment and clothing, cleaning the equipment and clothing, and waiting in line to wash or receive clean equipment. Nebraska Beef denies all allegations in the lawsuit. The Court has not made any determination regarding the merits of the lawsuit.

If you have worked at Nebraska Beef at any time since March 4, 2005, please call **[INSERT 1-800 NUMBER FROM ADMINISTRATOR]**. You cannot recover any monies that may be awarded unless you have joined the lawsuit and your claim has been filed with the Court prior to **[INSERT CLOSE OF OPT-IN PERIOD]**.

There is no guarantee that money will be recovered. Nebraska Beef denies all allegations. If you decide to join this lawsuit, your continued right to participate in this suit may depend upon a later decision by the District Court that you and the named Plaintiffs are actually "similarly situated" in accordance with federal law.

Federal law prohibits Nebraska Beef from discharging or in any other manner discriminating against you - including threatening your right to reside in or be citizen of the United States - should you decide to exercise your rights under the Fair Labor Standards Act and join this action.

**MAILED NOTICE**

**NOTICE OF COLLECTIVE ACTION LAWSUIT**

***CHUOL, et al. v. NEBRASKA BEEF and CORTEZ, et al. v. NEBRASKA BEEF***

Case Nos. 8:08CV90 and 8:08CV99

United States District Court, District of Nebraska

**TO: All current and former non-exempt, hourly production and support employees who have been employed at any time by Nebraska Beef, Ltd. and/or Nebraska Beef, Inc. at the Omaha, Nebraska processing facility during the time period March 4, 2005 to the present, and who use personal protective equipment.**

**RE: FLSA lawsuit seeking alleged unpaid overtime compensation**

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**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE  
COULD AFFECT YOUR LEGAL RIGHTS.**

**I. INTRODUCTION**

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which the Court has conditionally determined that you are "similarly situated" to the named Plaintiffs, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit, should you decide that it is appropriate and should you choose to do so.

**II. DESCRIPTION OF THE LAWSUIT**

On March 3 and 5, 2008, two lawsuits were brought against Defendant Nebraska Beef, Ltd. ("Nebraska Beef"), on behalf of all hourly production and support workers at Nebraska Beef's Omaha, Nebraska beef processing facility during the three years preceding the date on which the complaints were filed. The suits were filed in the United States District Court, District of Nebraska, and were consolidated by the Court on June 12, 2008. The named Plaintiffs in this consolidated lawsuit are Fermin Cortez and David Chuol.

This lawsuit alleges that hourly production and support workers at Nebraska Beef's Omaha, Nebraska beef processing facility: 1) failed to receive payment for all hours worked, including, but not limited to, time spent putting on protective equipment and clothing and cleaning/preparing tools at the beginning of the day, and removing and cleaning such equipment, clothing, and tools at the end of the day; and 2) failed to receive overtime compensation for hours worked in excess of forty (40) hours per week. Plaintiffs seek to recover payment for all hours worked and payment for unpaid overtime, including the interest thereon, statutory penalties, reasonable attorneys' fees and litigation costs on

behalf of themselves and all similarly situated workers. The parties and the Court have agreed to issue notice of this lawsuit to all hourly production and support workers who worked at Nebraska Beef's Omaha, Nebraska beef processing facility at any point from March 3, 2005 to the present. Nebraska Beef has denied all allegations in this lawsuit.

### **III. YOUR RIGHT TO PARTICIPATE IN THIS SUIT**

You may join this suit (that is, you may "opt in") by mailing your completed and signed "Opt-In Consent Form" to counsel at the following address:

**Rust Consulting**  
Attn: Nebraska Beef Wage & Hour Litigation  
**INSERT ADDRESS**  
**INSERT ADDRESS**

You must postmark your "Opt-In Consent Form" by **INSERT OPT-IN DEADLINE**. If you file an "Opt-In Consent Form," your continued right to participate in this suit may depend upon a later decision by the District Court that you and the named Plaintiffs are actually "similarly situated" in accordance with federal law.

### **IV. EFFECT OF JOINING THIS SUIT**

**Under the Fair Labor Standards Act, your immigration status cannot be raised as a defense to the claims that Nebraska Beef has failed to pay its employees for all hours worked.**

If you choose not to join in this lawsuit, you are free to file your own lawsuit. If you do not join the lawsuit and money is recovered on behalf of hourly workers, you will not receive a share of any money recovered. If the lawsuit is dismissed, voluntarily or by order of court, those who chose not to participate will be free to file their own lawsuit.

### **V. NO LEGAL EFFECT IN NOT JOINING THIS SUIT**

If you choose not to join this suit, you will not be affected by any judgment or settlement rendered in this case, whether favorable or unfavorable. If you choose not to join in this lawsuit, you are free to file your own lawsuit.

### **VI. NO OPINION EXPRESSED AS TO THE MERITS OF THE CASE**

This notice is for purposes of notifying Nebraska Beef's hourly production workers that a lawsuit to recover unpaid wages has been filed on their behalf, and to advise them that they have a legal right to participate in this lawsuit. Although the United States District Court for the District of Nebraska has authorized the sending of this Notice, the Court expresses no opinion regarding the merits of Plaintiffs' claims or Nebraska Beef's defenses.

## **VII. NO RETALIATION PERMITTED**

**Federal law prohibits Nebraska Beef from discharging or discriminating against you as a result of your decision whether or not to participate in this lawsuit.**

## **VIII. IMMIGRATION**

**You have a legal right to participate in this lawsuit regardless of whether you are in the United States legally or illegally.** Participating in this lawsuit will not affect your ability to change your Immigration status or become an American Citizen. If you are living and/or working illegally, Nebraska Beef may not use your immigration status as a defense to the claims made in the lawsuit. **In the United States, all hourly workers have the right to receive pay for all hours worked regardless of immigration status.**

## **VIII. YOUR LEGAL REPRESENTATION IF YOU JOIN**

The names and addresses for counsel for the named Plaintiffs are:

Shanon J. Carson Russ Henkin BERGER & MONTAGUE, P.C. 1622 Locust Street Philadelphia, Pennsylvania 19103 Tel: 1-800-424-6690 Fax: (215) 875-4604	Todd M. Schneider Carolyn H. Cottrell W.H. "Hank" Willson, IV SCHNEIDER WALLACE COTTRELL BRAYTON KONECKY LLP 180 Montgomery Street, Suite 2000 San Francisco, California 94115 Tel: (415) 421-7100 Fax: (415) 421-7105
Philip A. Downey, Esq. (Felipe Alejandro Downey) P.O. Box 736 Unionville, Pennsylvania 19375 Tel: (610) 324-2848 Fax: (610) 347-1 073 (fax) downeyjustice@grnail.com	

### **★★ PLEASE NOTE ★★**

There is a two (2) year deadline for filing overtime claims (or three (3) years if the violation was willful) running from the date(s) the overtime hours were actually worked. To maximize your recovery, return your "Opt-in Consent Form" as soon as possible so that your rights may be preserved.

**EXHIBIT B**  
**OPT-IN CONSENT FORM**

**CHUOL, et al. v. NEBRASKA BEEF and CORTEZ, et al. v. NEBRASKA BEEF**

Case Nos. 8:08CV90 and 8:08CV99

United States District Court, District of Nebraska

**Complete And Mail To:**

RUST CONSULTING, INC.

ATTN: NEBRASKA BEEF WAGE & HOUR LITIGATION

**INSERT ADDRESS**

**INSERT ADDRESS**

Name: (Please Print)	Date of Birth:
Address:	Phone No. 1:  Phone No. 2:

**CONSENT TO JOIN COLLECTIVE ACTION**

**Pursuant to Fair Labor Standards Act, 29 U.S.C. 8 216(b)**

1. I consent and agree to pursue my claims arising out of violations of the Fair Labor Standards Act in connection with the above-referenced lawsuit.
2. I worked as an hourly employee of Nebraska Beef, Ltd. from on or about (month, year) \_\_\_\_\_ to on or about (month, year) \_\_\_\_\_.
3. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* I hereby consent, agree and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
4. I specifically authorize the Named Plaintiffs, and their attorneys, Philip (Felipe) Downey, Esq., Berger & Montague, P.C., Schneider Wallace Cottrell Brayton Konecky LLP, and Welsh & Welsh, P.C., L.L.O., as my agents to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all compensation claim(s) I have against Nebraska Beef, Ltd., regarding my claims.

(Date Signed)	(Signature)
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**★★ NOTE ★★**

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.